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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
SIPOS, JOHN	
ART UNIT	PAPER NUMBER
3721	16

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/915,103	MCMAHON ET AL.	
	Examiner	Art Unit	
	John Sipos	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 August 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *28-74* is/are pending in the application.

4a) Of the above claim(s) *63-74* is/are withdrawn from consideration.

5)☒ Claim(s) *34,35,37-44,46-52 and 54-59* is/are allowed.

6)☒ Claim(s) *28,30-33,36,45,53 and 60-62* is/are rejected.

7)☒ Claim(s) *29* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

RESTRICTION REQUIREMENT

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims ~~1~~ 28 **-62** drawn to a method for making reclosable bags, classified in Class 53, subclass 412.

Group II. Claims 63-74, drawn to a web structure, classified in Class 24, subclass 400.

The inventions are distinct, each from the other, because of the following reasons:

The inventions of Groups II and I are related as **product and process of using the product**. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process of using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case the product as set forth in the claims of Group II can be uses in a process other than the one set forth in the claims of Group I. For example, the web structure of Group II can be used by cutting individual bag lengths from the web structure and forming the bags individually without the process set forth in the claims of Group I.

Because these inventions are distinct for the reasons given above, and because they have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes, as indicated, is proper.

Applicant is reminded that, upon cancellation of claims to a non-elected invention, the **inventorship must be amended** in compliance with 37 CFR 1.48(b) if

one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h). Applicant should further **amend the title**, in necessary, to reflect the elected invention.

CONSTRUCTIVE ELECTION

Following is 37 CFR 1.145 which concerns the constructive election of an invention which has previously received an Office action:

> "If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in 1.143 and 1.144."

Newly presented claims 63-74 are directed to an invention that is independent or distinct from the invention originally claimed for the reasons given above.

Since applicant has received an action on the merits for the originally presented invention of Group I, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 63-74 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP 821.03.

REJECTIONS OF CLAIMS BASED FORMAL MATTERS

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his Invention.

Claims 36,45,53 and 60-62 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The added material that is not supported by the specification is as follows:

a) Claims 36,53,61 and 62 – Applicant's disclosure does not provide support for the positioning of the zipper and the adhering of the first profile of the zipper to the film web before providing the wall panels, i.e. the forming of the web into a form that has the two wall panels. Similarly, claims 61 and 62 specifically recite the attachment of the zipper to the "continuous web" and "forming said continuous web into the reclosable bags" which sequence is not disclosed by Applicant in the embodiments directed to this operation, i.e. Figures 12-19.

b) Claim 45 – Applicant's disclosure does not provide support for the cutting of the side seals after the filling operations. The cutting is performed before the filling operation in all of Applicant's non-thermoform embodiments shown in Figures 12-19.

c) Claim 60 - Applicant's disclosure does not provide support for the use of tamper evident seal for the Figure 14 embodiment which is the one set forth in the independent claim 50. The tamper evident seals set forth in Applicant's disclosure are directed to different embodiments.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Regarding 37 CFR 1.131(a) declaration and the Belmont (6,427,421) reference, the reference is a U.S. patent that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the reference is claiming the same patentable invention, see MPEP § 2306. If the reference and this application are not commonly owned, the reference can only be overcome by establishing priority of invention through interference proceedings. See MPEP Chapter 2300 for interference proceedings. If the reference and this application are commonly owned, the patent may be disqualified as prior art by an affidavit or declaration under 37 CFR 1.130. See MPEP § 718.

Applicant's initation of the interference proceedings and the submission of the Declaration of February 11, 2003 under 37 CFR 1.608(a) that there is basis upon which applicant is entitled to a judgment relative to the patentee is the proper manner of overcoming the art rejection of the last Office action. The previous art rejection is repeated until such time that the interference issue is settled.

Claims 28,32 and 33 are rejected under **35 U.S.C. ' 102(e)** as being clearly anticipated by or alternatively are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Belmont (6,427,421) for the reasons set forth in the previous action. The patent to Belmont discloses the method of forming packages with recloseable fasteners that comprises of feeding a folded web 20, feeding a fastener 14 with sliders 12 to the web, sealing a half of the fastener to a first wall of the web at 56, cross sealing the web to form bags at 60, filling the bags at 66 and finally sealing the other half of the fastener to the other wall of the web at 68. Although the Belmont patent does not specifically discuss the insertion process of the slider on the fastener, the steps of providing a supply of sliders and inserting a slider on the fastener are inherent in the Belmont process since the sliders 12 are preapplied to the fasteners 14. Alternatively, these steps are well known in the zipper making art and it would have been obvious to one of ordinary skilled in the art to remove a slider from its supply and apply it to the fastener of Belmont. Regarding claims 32 and 33, note column 4, line 51 et seq. column 5, lines 11-25 and column 7, line 29 et seq. of Belmont.

Claims 30 and 31 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Belmont (6,427,421). The insulation of materials from each other that are not being sealed during a sealing operation is a well known step in any sealing operation and it would have been obvious to one of ordinary skilled in the art to insulate the portions of the fastener and the bag walls that are not being sealed.

ALLOWABLE SUBJECT MATTER

Claim 29 is objected to as being dependent upon a rejected base claim, but **would be allowable if rewritten in independent form** to include all of the limitations of the base claim and any intervening claims.

Claims 34,35,37-44,46-52 and 54-59 are allowed.

INTERFERENCE

Claims 34-62 of this application have been copied by the applicant from U. S. Patent No. 6,347,437 and 6,427,421. These claims are not patentable to the applicant because some of the claims are rejected on the bases stated above.

An interference cannot be initiated since a prerequisite for interference under 37 CFR 1.606 is that the claims be patentable to the applicant subject to a judgment in the interference.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882.** The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 305-3579**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.

John Sipos
Primary Examiner
Art Unit 3721